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EXAMINER

SHAY, DAVID M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARE CHRISTIANSEN and HUGIN HANSEN

Appeal 2010-005255
Application 09/097,383
Technology Center 3700

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and JOSEPH A.
FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 to 3, 8, 10 to 15, 18, and 23 to 25. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

Claim 1 is illustrative:

1. Apparatus for pulsed light cosmetic or therapeutic photo-treatment of the human or animal body, comprising a housing, a gas filled arc lamp light source within said housing operable to produce a pulsed light output, a power supply connected to said arc lamp light source for operation thereof to produce a light output duration of from 10 to 70 msec, a light output aperture defined by said housing, and a filter system for filtering undesired light output wavelengths from said pulse to produce a filtered light pulse for application to said body, at least part of said filter system being interposed between said light source and said aperture, wherein said filter system consists of (a) a filter for filtering out UV and near UV wavelengths shorter than 510 nm and for passing longer wavelengths and (b) water, said water being located in the apparatus for filtering out undesired skin heating wavelengths of light which would otherwise pass to said output aperture, wherein said filtered light pulse has an energy of at least 250 J/cm²/sec.

The Examiner relies on the following prior art:

Berry	US 1,677,016	Jul. 10, 1928
Vassiliadis	US 3,703,176	Nov. 21, 1972
Gustafsson	US 5,320,618	Jun. 14, 1994
Eckhouse	US 5,620,478	Apr. 15, 1997
Anderson	US 5,735,844	Apr. 7, 1998

Perkinelmer Optoelectronics, *High Performance Flash and Arc Lamps*, 3-38 (hereinafter “Optoelectronics”).

Schott, OG 550 Filter (Jun. 1997).

Appellants appeal the following rejections:

1. Claims 1 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Eckhouse and Berry.
2. Claims 1, 3, and 8 under 35 U.S.C. § 103(a) as unpatentable over Eckhouse, Berry, and Gustafsson.
3. Claims 10 to 15, 24, and 25 under 35 U.S.C. § 103(a) as unpatentable over Eckhouse, Berry, Gustafsson, Anderson, and Optoelectronics.
4. Claim 18 under 35 U.S.C. § 103(a) as unpatentable over Eckhouse, Berry, Gustafsson, and Vassiliadis.

FACTUAL FINDINGS

Appellants' Specification discloses an apparatus for pulsed light for treatment of a human or animal body. The apparatus, as depicted in Figure 4 includes a light source 13 within a housing 20. The light from the light source 13 is directed through the infra-red filter comprised of circulating water 24 and a long wave pass filter 25 (Spec. 19-20; Fig. 2).

Eckhouse discloses, in a first embodiment, a device 10 for therapeutic treatment of a human or animal body (Eckhouse, col. 1, ll. 16-28). As depicted in Figures 1 and 2, the device 10 includes a light source 14 in a glass tube 15 and a housing 12. The light from the light source 14 passes through an optical filter 18 and then through an iris or aperture 20. Eckhouse does not disclose the use of fluid in this embodiment for cooling.

Eckhouse discloses that heating of the skin is desired for treatment of external skin disorders and that heating of the entire thickness of a vessel is desired for treatment of vascular disorders (col. 7, ll. 19 to 34).

The Eckhouse disclosure includes an alternative embodiment, which includes a detector 22 mounted outside the housing 12 for real-time temperature measurement of the skin during its exposure to the pulsed light source. Eckhouse discloses that when the external portion of the epidermis of the skin reaches too high a temperature the operation of a pulsed light source can be stopped (col. 6, ll. 48 to 64).

Eckhouse discloses, in a second embodiment, which is depicted in Figures 4 and 8 to 10, a coupler 40. Coupler 40 includes a light source 42 which produces light which is coupled to an optical fiber 46 (Eckhouse, col.8, ll. 58-63). The light source and optical fiber are disposed within a reflector 44. The device may be used with a fluid filling the volume between the light source and the optical fiber 46 (Eckhouse, col. 10, ll. 4-6). The fluid may be water which is disclosed as being very effective for cooling the light source if high repetition rate pulses are used. Eckhouse also teaches that the presence of the fluid reduces the losses that are associated with glass to air transitions such as the transition between the light source envelope material and air (Eckhouse, col. 10, ll.7-11).

ANALYSIS

We agree with the Appellants that it is not clear from the Answer how the Examiner proposes to combine the teachings of Eckhouse and Berry. The Examiner finds that Eckhouse teaches the device as claimed in claim 1 except for the specific recitation of the use of water in conjunction with the

embodiment. As found above, Eckhouse teaches two embodiments, one depicted in Figure 1 which includes a light output aperture and other structure recited in claim 1 and one depicted in Figure 4 which does not include a light output aperture. Therefore, the only embodiment that teaches the device as claimed except for the use of water is the embodiment depicted in Figure 1.

The Examiner states that the reason to modify the teachings of Eckhouse so as to include water as taught by Berry is to provide cooling to the skin because Eckhouse teaches that is important to keep the tissue surface cool. We agree with the Appellants, as found above, that Eckhouse discloses that heating of the skin is desired as long as this heating does not cause the skin to be heated above 50°C. Therefore, we do not agree with the Examiner that Eckhouse teaches that it is important to keep the tissue surface cool. Eckhouse does teach that it is important to guard against heating the skin above 50°C. However, Eckhouse includes a detector 22 to detect the temperature of the skin and therefore there is no need to provide another means to assure that the skin is not heated above 50°C. The Examiner alludes to “myriad usages” for Eckhouse’s device that do not require heating. Ans. 6. Reference to these usages does not cogently explain why one of ordinary skill in the art would have been prompted to employ the cooling system of Berry in Eckhouse’s device. The first usage (providing a flash for picture taking) alluded to by the Examiner is directed to the use of the coupler (the second embodiment), which does not comprise a light aperture. Moreover, Eckhouse does not indicate that such a usage would pose a risk of over-heating the skin. As for the other usages (treating psoriasis and warts, throat lesions, and gynecological problems), the

Examiner has not pointed to any disclosure in Eckhouse explicitly stating or even suggesting that heating of the tissue is not desired or might be problematic in these applications.

We agree with the Appellants that there is no reason to modify the device disclosed in Berry with the teachings of Eckhouse. First we note that the Examiner did not discuss modifying Berry with the teachings of Eckhouse in the Final Rejection. Second, it is not clear from the conclusory statements in the Answer at pages 4 to 5 how the Examiner proposes to modify the device disclosed in Berry in keeping with the teachings of Eckhouse. As such, the Examiner has failed to establish a prima facie case of obviousness based on this rationale.

We will not sustain the Examiner's decision to reject the claims on appeal because as discussed above, we find that the Examiner has not established a reason for combining the teachings of Eckhouse and Berry, which is the basis of all the rejections on appeal, so as to arrive at the claimed subject matter.

DECISION

We reverse the Examiner's § 103(a) rejections.

REVERSED

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